IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14514 of 1993

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHKUMAR ODHAVJI VYAS - Petitioner(s)

Versus

EXECUTIVE ENGINEER (R & R DN) - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1,2.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award dated 05.05.1993 passed by the Labour Court, Junagadh in

Reference No.1004 of 1990 to the extent that the petitioner was denied 50 % back wages.

2.0 The brief facts of the case are that the petitioner was working as a Clerk-cum-Peon with the respondent herein. On 01.11.1987 the services of the petitioner was terminated by the respondent. Against the said order, the petitioner preferred a reference before the Labour Court, Junagadh, being Reference No. 1004 of 1990.

2.1 The Labour Court, by impugned award dated 05.05.1993, set aside the order of termination and directed the respondent to reinstate the petitioner with 50 % back wages. By way of this petition, the petitioner has challenged the said award of the Labour Court whereby he was denied 50 % of the back wages.

3.0 I have heard learned counsel for the petitioner and perused the documents placed on record. Though served none appears on behalf of the respondents. In the impugned award, the Labour Court has observed that the respondent Panchayat has not produced any evidence on record to prove that the petitioner was gainfully employed during the interim period. However, it has

proceeded on the premise that considering the year of reference, it would be difficult to presume that the petitioner had not worked at all during the said period. On that basis, the Labour Court has awarded 50 % back wages to the respondent.

3.1 In my opinion, the Labour Court was completely justified in awarding 50 % back wages to the petitioner. Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

3.2 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, I am of the opinion that no case is made out for interference from this Court in this petition.

4.0 In the result, the petition is dismissed. Rule is discharged with no order as to costs.

(K. S. JHAVERI, J.)

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